IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4700 OF 2006

Sanjay Dagaliya .. Petitioner.
Vs.
K.G.Marne .. Respondent.

WITH

WRIT PETITION NO.4701 OF 2006

Gopal Narayan .. Petitioner.
Vs.
K.G.Marne .. Respondent.

Mr.Anil Subramaniam for the petitioner.
Mr.P.M.Mengane for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 4TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioner and the respondent.

2. The petitioner in both the petitions have impugned two orders dated 1st February, 2006 and 21st April, 2006 passed on the applications at Exhibit-14 and Exhibit-21. The application at Exhibit-14 was filed by the plaintiff. In that application plaintiff had prayed for de-exhibiting the written statement since it was filed after the statutory period, provided for under order VIII Rule 1 of the Code of Civil Procedure, got over. That application was allowed, and hence the petitioner filed Exhibit-21 -

application for setting aside the order passed on the application at Exhibit-14 and taking written statement filed by him on record. The last date of filing of the written statement was 6.8.2005, whereas it was filed on 26.9.2005. After it was filed on record, the learned Judge took it on file and exhibited the same. It appears that application at Exhibit-14 filed by the plaintiff came to be allowed since there was no separate application for taking written statement on record was filed and/or the delay in filing the written statement was not explained. In my opinion, after having allowed the petitioner to place the written statement on record and having exhibited the same, in the interest of justice, the learned Judge ought not to have allowed Exhibit-14 merely on the ground that no separate application for taking written statement on record was filed. The delay in filing written statement was not unreasonable. Considering the overall facts and circumstances of the case, in my opinion, interest of justice will be served by the following order:

. On the petitioner paying cost of Rs.2,000/- to the respondent-plaintiff within two weeks from today, the orders impugned in the present writ petition shall stand quashed and set aside. The written statement, which is already on record, may be taken on file and

re-exhibited. The trial Court shall proceed with hearing of the case on merits in accordance with law since the suit for eviction is also on the ground of bonafide requirement, it may be disposed of as expeditiously as possible and preferrably within a period of one year from the date of receipt of this order. The writ petition is, disposed of, accordingly.

(D.B.Bhosale, J.)